

FILED

AUG 14 2019

Clerk, U.S. District Court
District Of Montana
Great Falls

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLARENCE L. BIRD RATTLER, JR.,

Defendant.

CR 03-76-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Clarence L. Bird Rattler, Jr. (Bird Rattler) has been accused of violating the conditions of his supervised release. Bird Rattler admitted the alleged violation. Bird Rattler's supervised release should be revoked. Bird Rattler should be placed in custody for 4 months, with 48 months of supervised release to follow.

II. Status

Bird Rattler pleaded guilty to Second Degree Murder on September 5, 2003. (Doc. 19). The Court sentenced Bird Rattler to 151 months of custody, followed by 60 months of supervised release. (Doc. 25). Bird Rattler's current term of supervised release began on April 8, 2019. (Doc. 51 at 2).

Petition

The United States Probation Office filed a Petition on August 6, 2019, requesting that the Court revoke Bird Rattler's supervised release. (Doc. 51). The Petition alleges that Bird Rattler violated the conditions of his supervised release by consuming alcohol. (Doc. 51 at 2). United States District Judge Brian Morris issued a warrant for Bird Rattler's arrest on August 6, 2019.

Initial appearance

Bird Rattler appeared before the undersigned for his initial appearance on August 13, 2019. Bird Rattler was represented by counsel. Bird Rattler stated that he had read the petition and that he understood the allegations. Bird Rattler waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a joint revocation hearing in this case and in Cause CR 02-55-GF-BMM on August 13, 2019. Bird Rattler admitted that he had violated the conditions of his supervised release by consuming alcohol. The violation is serious and warrants revocation of Bird Rattler's supervised release.

Bird Rattler's violation is a Grade C violation. Bird Rattler's criminal history category is III. Bird Rattler's underlying offense is a Class A felony. Bird

Rattler could be incarcerated for up to 60 months. He could be ordered to remain on supervised release for up to 28 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 5 to 11 months.

III. Analysis

Bird Rattler's supervised release should be revoked. Bird Rattler should be incarcerated for 4 months, with 48 months of supervised release to follow. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Bird Rattler that the above sentence would be recommended to Judge Morris. The Court also informed Bird Rattler of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Bird Rattler that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court **FINDS:**

That Clarence L. Bird Rattler, Jr. violated the conditions of his supervised release by consuming alcohol.

The Court **RECOMMENDS:**

That the District Court should revoke Bird Rattler's supervised release and commit Bird Rattler to the custody of the United States

Bureau of Prisons for 4 months, with 48 months of supervised release to follow. The sentence imposed in this case should run concurrent with the sentence imposed in Cause CR 02-55-GF-BMM.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

DATED this 14th day of August, 2019.


John Johnston
United States Magistrate Judge